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MAILED

JAN 22 2003

In re Application of	:	DIRECTOR'S OFFICE
John L. Howes	:	TECHNOLOGY CENTER 3800
Serial No. 09/543,764	:	DECISION ON PETITION
Filed April 5, 2000	:	FILED UNDER 37 CFR 1.181
For: CONTAINERIZED LIQUID	:	
COATING PRODUCT SUPPLY	:	
BUSINESS METHOD	:	

This is a decision on the Petition under 37 CFR 1.181 filed December 3, 2002, which is being treated as a request for reconsideration of the examiner's office action mailed out as paper #10.

The petition is DENIED to the extent indicated below.

A review of the file history reveals that on October 23, 2002 the Office issued a second action non-final rejection. In the non-final rejection, claims 1-4, 6-10, 17-22 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over a publication entitled *Web Ordering May Alter Role of Distributors*, published by national Home Center News, v. 24, n. 10, p. 23-25, on June 22, 1998, by Carol Tice (hereinafter *Distributor Roles*), in view of an article entitled *Lowe's Launches New Superstore in N.E. Dallas, TX*, published on February 10, 1998 on PR Newswire (hereinafter *Lowe's Superstore*); claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles* in view of *Lowe's Superstore* and further in view of applicant's disclosure; claims 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable *Distributor Roles* in view of *Lowe's Superstore* and further in view of an article entitled *Welcome Homes on the Virginia Beach Tour – Visit a premier Colonial Revival-Style Home, Painstakingly Built and Restored*, by Ann Wright published on April 19, 1998 (hereinafter *Colonial Restoration*).

The file history shows that a first Office action was mailed out on January 15, 2002. In that action, the examiner rejected the claims under 35 U.S.C. 103(a) as being unpatentable over *Distributor Roles*.

The addition of the references *Lowe's Superstore* and *Colonial Restoration* in the second Office action constituted new grounds of rejection using prior art not previously of record, and did not comprise a repeated action as alleged by applicant. The new grounds of rejection were not necessitated by applicant's amendment of the claims, nor were they based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c). Thus a non-final Office was properly made by the examiner (see MPEP 706.07(a)).

Additionally, applicant's right to appeal has not been abrogated. Under 37 CFR 1.191(a), an applicant for a patent dissatisfied with the primary examiner's decision on the second or final Office action may appeal to the Board of Patent Appeals and Interferences for review of the examiner's decision, once the fee has been paid for such review (see MPEP 1205).

The application is being returned to the examiner's docket to await treatment on the merits regarding the request for reconsideration.

Inquiries related to this decision may be directed to Supervisory Patent Examiner Wynn Coggins at (703) 308-1344.



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